IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD F. MORRISON,	)	
	)	Civil Action
Plaintiff	)	No. 03-CV-06102
	)	
vs.	)	
	)	
CARPENTER TECHNOLOGY CORP.,	)	
	)	
Defendant	)	

* * *

APPEARANCES:
ELLIS M. SAULL, ESQUIRE
On behalf of Plaintiff

JOHN F. WARD, ESQUIRE
G. THOMPSON BELL, III, ESQUIRE
On behalf of Defendant

* * *

M E M O R A N D U M

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Defendant's Motion for Summary Judgment filed May 28, 2004.[1] Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment was filed June 25, 2004.[2] For the reasons expressed below, we

[1] By Order of the undersigned dated July 15, 2004 we granted defendant leave to file a reply memorandum in support of its motion for summary judgment. The Reply Memorandum of Law in Support of Defendant's Motion for Summary Judgment was filed July 16, 2004.

[2] On July 21, 2004 Plaintiff's Motion for Leave to File Sur-reply Brief in Opposition to Defendant's Motion for Summary Judgment was filed. Plaintiff attached his proposed sur-reply brief to his motion for leave. In this District, there is no right to file a reply brief. See E.D.Pa.R.Civ.P. 7.1(c).

(Footnote 2 continued):

grant Defendant's Motion for Summary Judgment.

Specifically, we dismiss plaintiff's claims for discrimination based upon a hostile work environment and for retaliation. In addition, we dismiss any claim plaintiff may have attempted to assert in his prayer for relief based upon unsupported averments of libel, slander and defamation.[3]

(Continuation of footnote 2):

By Rule 16 Status Conference Order of the undersigned dated February 3, 2004, the parties were directed: "There shall be no reply briefs unless requested, or authorized, by the undersigned. Reply briefs shall not exceed seven pages and must be filed within three business days of the court's request or approval."

Plaintiff did file a motion for permission to file a sur-reply brief in this matter, but did not seek permission to file a sur-reply in excess of our page limits on reply briefs. Although plaintiff's fourteen-page sur-reply brief exceeds our page limit, we have considered it in its entirety. We direct plaintiff to comply with our page limitations in the future.

[3] In plaintiff's prayer for relief he requests judgment against defendant and relief in the form of "[c]ompensation for plaintiff including libel, slander and for defamation of character for putting [up with] something that was happening and was exactly what plaintiff said it was. Also, pain, suffering, and mental anguish." Neither party discusses these potential claims in their briefs.

A fair reading of the factual averments contained in plaintiff's Complaint in the light most favorable to plaintiff, reveals that he makes no factual averments which can sustain a cause of action for libel, slander or defamation. Each of these are separate causes of action but all require similar elements including that a communication was made, the communication was untrue and plaintiff suffered some damage. However, plaintiff does not aver when, if ever, a communication was made by defendant, either orally or in writing, that the communication was false, or that plaintiff was somehow harmed. Moreover, libel, slander and defamation are causes' of action, not items or categories of damages.

Thus, we conclude that plaintiff has not averred sufficient facts in his Complaint to support a cause of action for either libel, slander or defamation, and these are not proper items of damage in a discrimination case. Accordingly, we dismiss these claims as well as those discussed more fully below regarding plaintiff's causes of action for discrimination based upon a hostile work environment and for retaliation.

Procedural History

On September 24, 2003 plaintiff Edward F. Morrison filed his pro se Complaint in the Court of Common Pleas of Berks County, Pennsylvania. On November 5, 2003 defendant Carpenter Technology Corp., ("Carpenter") removed this matter to the United States District Court for the Eastern District of Pennsylvania. On November 11, 2003 defendant filed its answer and counterclaims.

Plaintiff avers a cause of action for racial discrimination based upon a hostile work environment in violation of Title VII of the Civil Rights Acts of 1866, 1964 and 1991[4] and the Pennsylvania Human Relations Act ("PHRA").[5] In addition, plaintiff asserts a claim for retaliation.[6]

Plaintiff's Contentions

Plaintiff is an African-American male who contends that he was subjected to a racially hostile work environment as the result of a number of acts allegedly committed by his co-workers during a six-month period from March 2002 through August 2002.

Initially, plaintiff asserts that his co-workers improperly and intentionally mixed inappropriate items in the trash. In particular, soiled rags, absorbent pads, aerosol cans

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[4] 42 U.S.C. §§ 2000(e) to 2000(e)-17.

[5] Act of October 27, 1955, P.L. 744, No. 222, §§ 1-13, as amended, 43 P.S. §§ 951-963.

[6] 42 U.S.C. § 1981.

and pieces of scrap metal appeared repeatedly in municipal trash containers which were Mr. Morrison's responsibility as the wire and trash collector for defendant Carpenter Technology Corporation. Mr. Morrison contends that these actions were taken by his co-workers to make his job more difficult.

Next, plaintiff asserts that a co-worker, Lance Laity, placed a soda can with an alleged toxic substance into a trash container for the purpose of doing harm to plaintiff.

Plaintiff further contends that approximately four days after he complained about the soda can incident he discovered a large cardboard drawing of a male with glasses wearing a uniform of some sort with an insignia on the left shirt pocket and a noose around his neck which plaintiff asserts is a representation of him.

Plaintiff contends that he immediately reported the incident to the appropriate management personnel at Carpenter and also reported the incident as a hate crime to the Reading Police Department. Plaintiff asserts that the police investigation was closed after a call to the Reading Police Department from Dennis Brown, a staff attorney for defendant.

Plaintiff contends that defendant retaliated against him for raising the issue of racial discrimination by placing a "Corrective Performance Review" in his personnel file. Plaintiff contends that this was the first step towards termination.

Finally, defendant's brief mentions two other alleged incidents which could support plaintiff's hostile-work-environment claim. One was an incident where plaintiff complained of someone "placing bath tissue with a brown substance on it". The other concerned a wire that plaintiff alleged someone had made to look like a hangman's noose. Neither of these incidents are mentioned in plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment. We address the significance of these alleged events in our decision below.

Facts

Based upon the pleadings, record papers, affidavits, exhibits, depositions and defendant's Statement of Material Facts,[7] the pertinent facts are as follows:

On March 25, 1975 plaintiff Edward F. Morrison began his employment with Carpenter. He was hired as a laborer and subsequently held a variety of positions in Carpenter's manufacturing plant located in Reading, Berks County, Pennsylvania. During the course of his employment at Carpenter, Mr. Morrison's performance generally met the requirements associated with his various positions.

[7] We have only considered those facts which plaintiff has admitted. Specifically, we adopt as admitted paragraphs 1, 6-16, 19, 21-25, 27-52, 54, 56, 58, 67-85, 93 96-98, 104 and 105 of defendant's Statement of Material Facts. We conclude that the averments contained in the remaining proposed statement of facts, which are disputed by plaintiff, are not material to any genuine issue of fact in this case.

In November 1983 plaintiff bid on, and was awarded, the position of polisher. As a polisher, plaintiff was paid at a rate of Job Class 8. This rate was considerably higher than the Job Class 3 rate associated with his prior position. Plaintiff enjoyed working as a polisher and held this position for nearly 20 years.

In early 2002 Carpenter underwent a company-wide reduction in force because of a downturn in business related to the September 11, 2001 terrorist attacks on the Twin Towers, the Pentagon and a hijacked plane that crashed in Western Pennsylvania. As a result, several hundred of Carpenter's employees were laid off. Consequently, because of low seniority, plaintiff was displaced from his position as a polisher.

However, plaintiff was not laid off. Instead, defendant provided Mr. Morrison with the opportunity to select one of three available laborer positions. Plaintiff chose the position of wire and trash collector in the Bar Finishing Department because it was the least physically demanding of the three positions.

Plaintiff's position as the wire and trash collector became effective on February 10, 2002. The duties of his new position required plaintiff to collect wire and trash from 55-gallon plastic trash containers located in the work centers throughout his department and deposit the collected materials

into dumpsters. Mr. Morrison was provided a diesel-powered forklift truck to transport the collected materials to the dumpsters.

On February 12, 2002, in relation with plaintiff's new job responsibilities, defendant provided Mr. Morrison with training in personal responsibility and safety. During that training, plaintiff received a copy of defendant's health and safety rules and guidelines. Furthermore, plaintiff understood that under the health and safety rules and guidelines he was required to immediately report any dangerous act or practice in the workplace.

Plaintiff's position as a wire and trash collector called for the use of personal protective equipment, including a hard hat, safety glasses, safety shoes, leather gloves, hearing protection and personal fall protection. In addition, plaintiff requested and received from defendant a Tyvek suit[8] and respirator.

Carpenter's policies and procedures for waste disposal required employees to segregate different types of waste and deposit the waste in specifically designed trash containers. Located within each work center were two waste containers. One was for tie wire disposal, and the other was for general waste

[8] The Tyvek protective suit was a solid, white, one-piece jumpsuit with a single zipper running from the neck to the crotch area. There was a single, rectangular "Kappler" logo on the upper left of the front of the jumpsuit.

disposal.

Containers for toxic or hazardous waste were also distributed separately throughout each building in defendant's manufacturing facility. However, these containers were often located further away from the individual work centers than the tie wire and general waste containers. There were also separate containers for recyclable materials.

Shortly after assuming his duties as the wire and trash collector, plaintiff became aware that employees were depositing waste in the wrong containers. On occasion, employees would deposit waste in improper containers because they did not want to take the trouble to go to the container specifically designated for that type of waste. Plaintiff informed several shift coordinators, who were non-supervisory employees, of the improper disposal problem. Plaintiff also brought this problem to the attention of Neil Culp, Jr., the Manager of the Bar Finishing Department.

In response to plaintiff's complaints, Mr. Culp offered plaintiff the opportunity to develop and present a training program on proper waste disposal to his co-workers. Plaintiff accepted Mr. Culp's offer and began to work on a waste management presentation. Defendant provided plaintiff with the assistance of another employee, Dennis Levan, in preparing the presentation.

Defendant scheduled departmental meetings for April 1,

2 and 3, 2002 to ensure that plaintiff would be able to give his presentation to each unit and shift in the Bar Finishing Department. Plaintiff conceded at his deposition that, in so doing, defendant directly addressed his complaints about improper waste disposal and gave him the opportunity to have personal involvement in solving this problem.

Plaintiff never gave his presentation to his co-workers. Plaintiff called in sick all three days that the presentation was to be given. Plaintiff submitted his materials to Mr. Culp and those materials were given to Area Manager Joseph Pieja, who gave the waste management presentations in plaintiff's absence.

On May 13, 2002 Mr. Culp asked Sean McGowan, Carpenter's Environmental Protection Manager, to conduct an audit of the waste disposal in the trash receptacles in Buildings 73 and 97. Carpenter subsequently conducted an inspection of all trash and scrap receptacles in both buildings. The inspectors found no evidence of inappropriate mixing of materials. They concluded that housekeeping in both buildings was acceptable and that there were no circumstances supporting a claim of municipal waste contamination.

On May 30, 2002 the Pennsylvania Department of Environmental Protection ("DEP") conducted an unscheduled inspection of Carpenter's Bar Finishing department. The DEP

agent found no evidence of inappropriate mixing of waste materials. His findings were consistent with the inspection done by Carpenter two weeks earlier.

During the week of March 27, 2002 plaintiff mentioned to Craig Moyer, Shift Coordinator, that he had found a smoking soda can in the trash approximately one week earlier and had reported the incident to Ed Reifinger, another Shift Coordinator. Mr. Moyer reported plaintiff's complaint to Mr. Pieja.

On April 22, 2002 plaintiff composed a notarized statement which set forth his belief that a co-worker, Lance Laity, had deliberately placed a reactive substance in a soda can approximately six weeks earlier on March 13, 2002 and then placed the soda can in a trash container with the intent to cause plaintiff physical injury when he dumped the container. Plaintiff did not immediately advise management of the soda can incident. Therefore, the can could not be retained. Plaintiff did not make any specific complaints of racial discrimination or harassment in his April 22 statement.

Plaintiff was out of work from March 28, 2002 until April 22, 2002 except for April 11, 2002. During this 26-day period, plaintiff took nine sick days, two unscheduled personal days and five vacations days. Plaintiff returned to work on Tuesday, April 23, 2002.

On plaintiff's first day back to work on April 23rd,

Mike Wilkes, an Area Manager, met with plaintiff to address plaintiff's concerns relating to visual inspection of material at the Taylor Wilson Polisher. Mr. Wilkes told plaintiff that based upon plaintiff's stated concerns about the current inspection process at this polisher, defendant was changing to a different inspection process. Mr. Wilkes also told plaintiff that Wilkes had authorized an engineering project to improve the ergonomics of visually inspecting bar material. Plaintiff was appreciative that Mr. Wilkes had timely responded to his concerns.

On Friday, April 26, 2002 as plaintiff was collecting wire and trash in Building 73, he discovered a large cardboard drawing which was approximately 64 inches high by 24 inches wide. The drawing depicted a male wearing a Carpenter uniform with wide black horizontal stripes similar to those on a prison uniform and a square Carpenter logo in the center of the left chest area of the shirt. The individual in the drawing had his arms extended upward and a rope in the shape of a noose around his neck.

The drawing was not located near any of the trash containers which plaintiff was responsible for emptying, nor was it in or near any of the dumpsters into which plaintiff dumped trash. Rather, it was placed in an aisle between areas known as the Turn and Polish Line and a visual inspection area. This aisle was an area where anyone passing by could see the drawing.

Plaintiff reported the drawing to Todd Eckert, another

Area Manager, at approximately 10:00 a.m.. Mr. Eckert immediately removed the drawing from the work area. Plaintiff then contacted Tom Reed, Director of Employee Relations, by telephone, and told Mr. Reed that he believed that the drawing was a "effigy" of him and in violation of his civil rights. Mr. Reed informed Mr. Culp of plaintiff's complaint and asked Mr. Culp to investigate. Mr. Culp immediately discussed the incident with plaintiff, took possession of the drawing and began to investigate its origin.

Mr. Culp conducted an investigation which involved interviews with 24 employees who worked in the Bar Finishing Department. Those interviews included several employees that were either African-American or Hispanic.[9] There is no evidence that any of defendant's employees believed that the cardboard drawing was a depiction of plaintiff.[10]

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[9] In Plaintiff's Response to Defendant's Statement of Material Facts filed June 25, 2004, plaintiff denies Paragraph 59 of defendant's Statement of Material Facts. Rather, plaintiff contends that of the 24 employees, one was a Hispanic male, two were African-American females and two were African-American males. Defendant does not dispute these statistics. Thus, we conclude that based upon plaintiff's statistics, five of the twenty-four employees interviewed by defendant were of either African-American or Hispanic descent. That figure represents nearly 21 percent of all those employees interviewed. We further conclude that defendant's representation that several of the employees were either African-American or Hispanic is reasonable.

[10] In response to paragraphs 60-66 of Defendant's Statement of Material Facts plaintiff contends that the summaries of the interviews referred to by defendants are not full transcripts of the interviews, are not any indication of the questions asked of any specific employee, and are of no value. We do not consider the actual responses of the employees regarding what they thought the drawing depicted and what it did not. However, we do find that plaintiff has submitted no evidence that anyone at Carpenter other than plaintiff believed that the drawing represented a depiction of plaintiff.

On April 30, 2002 plaintiff informed Mr. Culp that he had reported the cardboard drawing incident to the police and that it was being investigated as a hate crime. Plaintiff further informed Mr. Culp that the police wanted Carpenter to retain the drawing because it was to be used as evidence. Mr. Culp informed plaintiff that Carpenter intended to preserve the drawing and thanked plaintiff for informing him of the police investigation.

On May 1, 2002, Carpenter reported the discovery of the cardboard drawing to its Health, Safety and Asset Protection Department and asked the department to conduct an independent investigation of plaintiff's allegations. Shortly thereafter, Mr. Culp and Mr. Eckert met with plaintiff to inform him of the preliminary findings of Mr. Culp's investigation into the origin of the drawing. Mr. Culp informed plaintiff that none of the employees he had interviewed believed the drawing to be a likeness of plaintiff.

At that same meeting, Mr. Culp asked Mr. Morrison why he believed that the drawing represented his likeness. Mr. Morrison responded: "I work by the square, the horizontal and the perpendicular form the right angle of a square."[11] When Mr. Culp asked plaintiff to explain the meaning of his statement,

[11] Although the quoted language appears unresponsive to the question posed to plaintiff, the language used by plaintiff in the quotation is an accurate recitation of his response.

plaintiff told Mr. Culp that "he wouldn't understand." Finally, Mr. Culp informed plaintiff that he would keep him updated on the investigation and thanked plaintiff for attending the meeting.

On May 8, 2002 Christopher J. Musser, an investigator with Carpenter's Health, Safety and Asset Department, met with plaintiff to discuss plaintiff's allegations of racial harassment. Plaintiff refused to cooperate with Mr. Musser claiming that he had been instructed by "an outside agency not to discuss anything associated with this case." Mr. Musser asked plaintiff to describe the drawing and to explain why it bothered him. Plaintiff refused to cooperate and abruptly left the meeting.

On May 9, 2002 plaintiff attended a meeting with Mr. Reed, Mr. Culp and Jenny Rodriguez (an Employee Relations Specialist), and defendant's Manager of the Employment/Corporate Diversity. During the meeting, Mr. Reed advised plaintiff that Carpenter was conducting an internal investigation into his complaints and explained Carpenter's policy and guidelines concerning harassment and discrimination in the workplace. Mr. Reed advised Mr. Morrison that under company policy, it was necessary for him to cooperate in the investigation. Plaintiff indicated that he would cooperate.

At the same meeting, Mr. Culp provided plaintiff with an update on the investigation into the cardboard drawing and

explained that none of the employees he had interviewed believed that the drawing was a likeness of plaintiff. In addition, Mr. Culp also stated that he would be looking into plaintiff's complaint of possible fecal matter being placed in the trash. Plaintiff responded that the tissue paper incident "was the least of [his] concerns".

Mr. Reed further advised plaintiff that Donald Keim, Manager of Health, Safety and Asset Protection, would be interviewing him as part of Carpenter's internal investigation into his complaints. Mr. Keim subsequently met with Mr. Morrison on May 9, 2002 for almost two hours.

On May 10, 2002 plaintiff attended another meeting with Mr. Reed and Mr. Culp. At the meeting, plaintiff was expressly advised that if he experienced any further incidents of harassment he was "to contact Neil Culp and no one else". Mr. Culp gave plaintiff a business card and his pager number and asked plaintiff to call him if he encountered any problems on the job. Mr. Culp then advised plaintiff that Carpenter had scheduled a departmental meeting for May 13, 2002 at 2:00 p.m., to review Carpenter's policies prohibiting discrimination and harassment in the workplace. Mr. Reed provided plaintiff with a copy of defendant's Harassment & Discrimination Policy and guidelines and assured plaintiff that there would be no retaliation against him for making complaints of harassment.

On May 13, 2002 at approximately 1:40 p.m., plaintiff attended a second meeting with Mr. Culp, Mr. Reed and Jenny Rodriguez. Plaintiff informed all three that he would not be attending the scheduled 2:00 p.m. departmental meeting on harassment and discrimination because he had other things to do.

Mr. Reed reviewed Carpenter's Harassment and Discrimination Policy with plaintiff. Mr. Reed then asked plaintiff to read and sign a Memorandum acknowledging his understanding of the policy and his agreement to immediately notify Mr. Culp of any and all future allegations of company policy violations. The Memorandum specifically warned plaintiff of the potential consequences of any failure to report any further allegations of harassment directly to his manager. After reading the Memorandum, plaintiff signed it and was given a copy for his records.

Defendant held departmental meetings on May 13, 14 and 15, 2002 for each of the three shifts working in the Bar Finishing Department. At each meeting, Mr. Culp reviewed Carpenter's internal rules prohibiting the posting of any unauthorized materials in the workplace. Mr. Culp also reviewed Carpenter's policy on harassment and specifically advised the meeting's attendees that defendant had a "zero tolerance" for such behavior.

Mr. Culp further advised the attendees that defendant's

Health, Safety and Asset Protection Department would be conducting a second, formal investigation of the incident involving the cardboard drawing. Each attending employee was given a copy of defendant's Harassment and Discrimination Policy and was asked to sign a form acknowledging their receipt of the policy.

From May 14 through June 11, 2002 Mr. Keim personally conducted interviews with 18 Carpenter employees and two contractors who worked in the Bar Finish Department. Seven of the employees had been previously interviewed by Mr. Culp. Mr. Keim also conducted an interview with plaintiff. Mr. Keim found no evidence of plaintiff's claims for racial harassment.

Carpenter sent a sample of the soiled paper retrieved by Mr. Pieja on May 2 or 3, 2002 to a laboratory for testing. The sample tested negative for fecal matter. The laboratory determined that the reddish colored material on the towels was instead a sauce of some sort which contained paprika. The laboratory confirmed its conclusion with micro-chemical testing.

Plaintiff disputes that the paper sent to the laboratory for testing was the same paper or material he saw. Because plaintiff did not retain possession of what he believed to be toilet paper with brown or fecal matter on it, there is no evidence to support a conclusion that the material tested was the same item seen by Mr. Morrison.

On July 15, 2002 defendant had a letter hand-delivered to plaintiff setting forth its findings and conclusions with respect to plaintiff's complaints regarding the cardboard drawing, the soda can incident and the inappropriate mixing of waste, including the tissue paper incident containing alleged fecal matter. The letter set forth Carpenter's findings and conclusions with respect to each of the complaints. The letter further advised plaintiff that defendant had concluded plaintiff's claims were without merit and that defendant was closing its investigation into his complaints with a finding of no evidence of harassment, discrimination or any violations of work safety laws, policies or guidelines.

In summary, defendant concluded that there was no evidence to support plaintiff's claim that the cardboard drawing was an act of racial harassment directed specifically toward him. In addition, defendant concluded that there was no evidence to support plaintiff's claims as it related to the soda can incident or the toilet paper incident. Finally, defendant concluded that it had addressed plaintiff's concerns about the mixing of municipal waste and the results of both the internal audit and the DEP inspection demonstrated conclusively that the Bar Finish Department employees were not inappropriately mixing waste.

On July 21, 2002 plaintiff was recalled to his former position as a polisher. As a result of the recall, plaintiff's

pay rate was increased from JC3 to JC8. Plaintiff remained in that position until August 18, 2002 when he was displaced back into his laborer position.

On Monday August 19, 2002, the day after plaintiff was displaced back into the laborer position, he reported to Ed Reifinger, Shift Coordinator, that he had found two pieces of wire in a waste container that he was dumping while performing his duties as a wire and trash collector. Plaintiff gave the wire to Mr. Reifinger, stating vaguely "I'm going to show you something and I want to see what you are going to do with it."

Plaintiff subsequently alleged that the wire had been bent into the shape of a "hangman's noose" to racially harass him. Mr Reifinger showed the two pieces of tie wire to Dennis Levan, who took two photographs of the wire. Defendant contends that the wire does not look like a "hangman's noose". Plaintiff disagrees.

Defendant concluded that plaintiff's act of reporting the two pieces of wire to Ed Reifinger violated the terms of the Memorandum plaintiff signed May 13, 2002 because the complaint was not made directly to Neil Culp and because defendant concluded that the complaint was not made in good faith.

On August 22, 2002 plaintiff was issued a Corrective Performance Review for disruptive behavior relating to his complaint about the two pieces of tie wire. This discipline

resulted in neither any economic loss to plaintiff or a change in any of the terms and conditions of his employment.

On March 10, 2003 plaintiff filed a dual charge of discrimination with the Pennsylvania Human Relations Commission and the United States Equal Employment Opportunity Commission ("EEOC"). On May 2, 2003 defendant filed its response with the EEOC. On July 1, 2003, the EEOC issued a Dismissal and Notice of Rights which stated in part: "Based upon its investigation, the EEOC is unable to conclude that the information obtained established violations of [Title VII]."

In August 2003 plaintiff bid on, and was awarded, the position of bar wash operator. As a bar wash operator plaintiff was no longer responsible for collecting wire and trash. Plaintiff made no complaints of harassment after being awarded the bar wash operator position. Plaintiff worked as a bar wash operator from August 2002 until his retirement on April 1, 2004. Plaintiff retired after thirty years of service and is currently receiving pension and health account credits under Carpenter's retirement plans.

Standard of Review

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of

material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); Federal Home Loan Mortgage Corporation v. Scottsdale Insurance Company, 316 F.3d 431, 433 (3d Cir. 2003). Only facts that may affect the outcome of a case are "material". Moreover, all reasonable inferences from the record are drawn in favor of the non-movant. Anderson, supra.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See Watson v. Eastman Kodak Company, 235 F.3d 851, 857-858 (3d Cir. 2000). A plaintiff cannot avert summary judgment with speculation or by resting on the allegations in his pleadings, but rather must present competent evidence from which a jury could reasonably find in his favor. Ridgewood Board of Education v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

Discussion

Hostile Work Environment

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms,

conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). It is well settled that a plaintiff can establish a violation of Title VII by proving that racial harassment created a hostile or abusive work environment. Aman v. Cort Furniture Rental Corporation, 85 F.3d 1074 (3d Cir. 1996). Furthermore, it is equally well settled that claims brought pursuant to the PHRA should be interpreted consistent with Title VII. Weston v. Commonwealth of Pennsylvania, Department of Corrections, 251 F.3d 420 (3d Cir. 2001); Johnson v. Souderton Area School District, No. Civ.A. 95-7171, 1997 U.S. Dist. LEXIS 4354 (E.D. Pa. April 1, 1997).

A hostile work environment exists when a workplace is permeated with discriminatory intimidation, ridicule and insult so severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993). Incidents of harassment are considered pervasive if they occur in concert or with regularity. Andrews v. City of Philadelphia, 895 F.2d 1469, 1484 (3d Cir. 1990).

To establish a claim for a hostile work environment premised on racial animus, a plaintiff must establish: (1) that he suffered intentional discrimination because of his race; (2)

the discrimination was pervasive and regular; (3) the discrimination detrimentally affected plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same race in that position; and (5) respondent superior liability applies. Cardenas v. Massey, 269 F.3d 251, 260 (3d Cir. 2001); Andrews, 895 F.2d at 1482.

When determining whether an environment is sufficiently hostile or abusive, the court must look at the totality of the circumstances. This review includes the "frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Faragher v. City of Boca Raton, 524 U.S. 775, 787-788, 118 S. Ct. 2275, 2283, 141 L. Ed. 2d 662, 676 (1998). Thus, we review plaintiff's contentions of discrimination by looking at the totality of the circumstances involving his allegations.

Plaintiff alleges four circumstances or events in support of his claim for a hostile work environment. Initially, plaintiff asserts that his co-workers intentionally and improperly mixed different types of waste into the containers that he was required to dispose of. Three of plaintiff's allegations of discrimination are a subset of the allegation of improper waste disposal.

Plaintiff asserts that on one occasion, a co-worker, Lance Laity, placed a soda can with an alleged reactive, toxic substance in one of the trash containers with the intent to harm him. On another occasion plaintiff found two pieces of tie wire which he alleges were shaped in the form of a "hangman's noose". Finally, plaintiff alleges that on one occasion, a co-worker placed bath or tissue paper with a brown substance on it, alleged to be fecal matter, into one of the trash containers.

In addition, plaintiff asserts that someone at Carpenter placed a cardboard drawing of a person with a noose around his neck. Plaintiff asserts that this cardboard drawing was an "effigy" of him.

The first element in analyzing plaintiff's claim for a hostile work environment requires plaintiff to demonstrate that he suffered intentional discrimination because of his race. The only evidence offered by plaintiff to support his claim in that regard is the incident relating to the cardboard drawing. In particular, plaintiff does not provide any argument, or rely in any way, on the toilet-paper or tie-wire incidents in his brief.

In addition, plaintiff provides no evidence to support his allegations regarding the soda-can incident other than his own assertions. As noted above, a plaintiff cannot avert summary judgment with speculation or by resting on the allegations in his pleadings, but rather must present competent evidence from which

a jury could reasonably find in his favor. Ridgewood, supra.

Other than his own testimony, plaintiff has no evidence that the soda can incident ever occurred. Thus, we conclude that plaintiff has not established any evidence to support a finding that he suffered intentional racial discrimination regarding the tissue-paper, tie-wire or soda-can incidents.

The same analysis applies to plaintiff's contention that his co-workers intentionally mixed different types of waste in the trash containers. Plaintiff has no evidence except his own conclusionary assertions that this was done intentionally to discriminate against him because of his race.

We agree that the cardboard drawing incident could be construed as racially motivated and was intentionally created as a form of discrimination. We also agree with plaintiff that this act detrimentally affected him. However, for the following reasons, we conclude that plaintiff's reliance on this single incident does not create a hostile work environment.

Plaintiff provides no evidence to support his contention that the cardboard drawing was meant to represent him. Rather, all plaintiff relies on is his subjective determination of what the cardboard drawing represents. Therefore he has not created a genuine issue of material fact that he suffered intentional discrimination because of his race (the first prong of the hostile-work-environment test).

In response, defendant relies on the report of its interviews of plaintiff's co-workers in the Bar Finishing Department. Defendant asserts that not a single co-worker, including African-American or Hispanic co-workers, concluded that the cardboard drawing resembled Mr. Morrison.[12]

It is plaintiff's burden to overcome a motion for summary judgment by submitting evidence on every element of the cause of action. Watson, supra. Because plaintiff fails to submit any evidence of his contention that he suffered intentional discrimination because of his race, his claim of a hostile work environment fails.

In addition, plaintiff also fails to create a genuine issue of material fact regarding whether the alleged discrimination was regular and pervasive (the second prong of the hostile-work-environment test). We consider the cardboard drawing a repulsive incident and do not countenance such behavior. Such conduct is reprehensible in our society. However, "offhand comments and isolated incidents of offensive conduct (unless extremely serious) do not constitute a hostile work environment." Burkett v. Glickman, 327 F.3d 658, 662

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[12] Plaintiff objects to defendant's use of the summaries of these interviews because defendant did not take verified statements or transcripts of the interviews.

However, plaintiff could have conducted depositions of any employee during discovery. Nevertheless, plaintiff did not conduct any discovery except requesting certain documents from defendant. It was only after the close of discovery and after defendant filed the within motion, that plaintiff sought further discovery.

(8th Cir. 2003); Washington v. Martinez, No. Civ.A. 03-3529, 2004 U.S. Dist. LEXIS 4325 (E.D. Pa. January 28, 2004).

Because all plaintiff relies on or has evidence of is this single incident with probable racial undertones, plaintiff has failed to establish that his workplace was permeated with discriminatory intimidation, ridicule and insult sufficiently severe or pervasive to alter the terms and conditions of plaintiff's employment and create an abusive working environment. Washington, supra. Accordingly, we conclude that this single incident, while reprehensible, is not sufficient to satisfy the "regular and pervasive" prong of the hostile-work-environment test.

Next, we conclude that plaintiff has satisfied the subjective standard by establishing that he was detrimentally affected by the alleged events (the third prong of the test). However, plaintiff fails to submit any evidence to show that a reasonable person of the same race as plaintiff in the same circumstances would have been detrimentally affected by the alleged incidents of discrimination necessary to satisfy the fourth prong of the test. This objective standard "puts a check on the overly sensitive plaintiff who is unreasonably affected by acts of discrimination." Koschoff v. Henderson, 109 F. Supp. 2d 332, 338 (E.D. Pa. 2000).

In this case, Mr. Morrison fails to meet his burden of

demonstrating that any of the events which he alleges are evidence of racial discrimination, except for the cardboard drawing. Even as to that event, he fails to produce any evidence to establish that a reasonable person of the same race in the same circumstances would be detrimentally affected. The fact that Mr. Morrison found this incident to be intolerable, alone will not suffice because Title VII does not guarantee a workplace free from stress. Johnson, supra. Accordingly, we find that plaintiff fails to satisfy the fourth prong of the hostile-work-environment test.

The final prong of the hostile-work-environment test is the existence of respondeat superior liability. An employer is liable for an employee's behavior under a negligence theory of agency if a plaintiff proves that management-level employees had actual or constructive knowledge about the existence of a hostile work environment and failed to take prompt and adequate remedial action. Bouton v. BMW of North America, Inc., 29 F.3d 103 (3d Cir. 1994); Andrews, supra. Remedial action is adequate if it is reasonably calculated to prevent further harassment. Furthermore, "a remedial action that effectively stops the harassment will be deemed adequate as a matter of law. Knabe v. The Boury Corp., 114 F.3d 407, 412 n. 8 (3d Cir. 1998).

In this case, defendant took numerous steps to address plaintiff's complaints. These actions included permitting

plaintiff to address his co-workers by giving a presentation on proper waste disposal. In addition, defendant attempted to investigate each of plaintiff's complaints regarding the individual events including the soda-can, tissue-paper and tie-wire incidents. Furthermore, defendant conducted both an informal and formal investigation of the cardboard-drawing incident. Plaintiff was throughly apprised of the investigations as they progressed and was provided a report at the conclusion of each investigation.

An internal audit as well as an independent audit by DEP of the waste-removal process at Carpenter revealed that there was no problem at Carpenter with co-mingling of different types of waste. In addition, after August 2002 until his retirement in April 2004, plaintiff did not complain of any further incidents of harassment.

Accordingly, it appears that the efforts of defendant's management to address plaintiff's concerns and complaints resulted in a workplace free from harassment against plaintiff. Because the actions taken by Carpenter effectively stopped the alleged harassment, its actions are deemed adequate as a matter of law and there can be no liability on the part of Carpenter. Knabe, supra.

Because plaintiff fails to satisfy either prongs one, two, four or five of the hostile-work-environment test and

considering the totality of the circumstances, we conclude that plaintiff fails to meet his burden of proof. Accordingly, we grant defendant's motion for summary judgment as it relates to plaintiff's claim for discrimination based upon a hostile work environment.

Retaliation

Plaintiff's complaint further alleges that defendant retaliated against him in violation of Title VII and the PHRA. Specifically, plaintiff asserts that on August 22, 2002 he received a Corrective Performance Review for allegedly disruptive behavior relating to the tie-wire incident

To establish a prima facie case of retaliation, plaintiff must show that (1) he engaged in a protected employee activity; (2) that defendant took an adverse employment action after, or contemporaneous with, plaintiff's protected activity; and (3) a causal link exists between plaintiff's protected activity and defendant's adverse action. Farrell v. Planters Lifesavers Company, 206 F.3d 271, 279 (3d Cir. 2000).

Retaliation claims follow the same burden-shifting paradigm as discrimination cases under Title VII. Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997). Once plaintiff establishes a prima facie case, the burden shifts to defendant to articulate a legitimate, non-discriminatory reason for the employment action in question. Quiroga v. Hasbro, Inc.,

934 F.2d 497 (3d Cir. 1991). If defendant satisfies its burden of production, plaintiff must demonstrate that defendant's stated reason for the action taken is pretextual. Waddell v. Small Tube Products, Inc., 799 F.2d 69 (3d Cir. 1986).

Protesting what an employee believes in good faith to be a discriminatory practice is clearly protected conduct. A plaintiff is not required to prove the merits of an underlying discrimination complaint to prove a cause of action for retaliation. However, plaintiff must demonstrate that he was acting in good faith and under a reasonable belief that a violation existed. Aman v. Cort Furniture Rental Corporation, 85 F.3d 1074, 1085 (3d Cir. 1996).

In this case, defendant does not dispute that plaintiff complained of racial harassment when he discovered the cardboard drawing on April 26, 2002 or that this constitutes protected activity. However, defendant asserts that plaintiff's complaint about the tie wire allegedly shaped like a hangman's noose on August 19, 2002 is not protected activity because it fails to satisfy the "good faith, reasonable belief" standard enunciated by the United States Court of Appeals for the Third Circuit in Aman.

Specifically, defendant contends that Mr. Morrison agreed to immediately notify his Manager, Neil Culp, of any future allegations of violations of company policy. However,

plaintiff did not notify Mr. Culp regarding the tie-wire incident. Rather, Mr. Morrison brought his complaint to Ed Reifinger, a Shift Coordinator. Defendant asserts that the tie wire was not shaped like a noose. Rather, defendant asserts that it was tied in a manner consistent with company practice to protect workers from being poked by the ends of the wire.

Because it is clear that plaintiff engaged in protected activity in reporting the cardboard drawing incident, it is not necessary to determine whether the tie-wire incident also constitutes protected activity. Therefore, we conclude that plaintiff satisfies the first prong of the retaliation test.

However, we note that in the context of plaintiff's hostile-work-environment claim, plaintiff did not provide any evidence to support a finding that the tie-wire incident was racially motivated. Plaintiff failed to mention or argue that incident in support of his claims for either a hostile work environment or retaliation. Thus, in that regard, we conclude that plaintiff fails to meet his burden of proving that the tie-wire incident was protected activity.

Next, plaintiff must show that defendant took an adverse employment action after, or contemporaneous with, the protected activity. Farrell, supra. Plaintiff asserts that the Corrective Performance Review issued to him on August 22, 2002 constitutes an adverse employment action. For the following

reasons, we disagree.

Employer conduct constitutes an "adverse employment action" pursuant to Title VII only if it "alters the employee's 'compensation, terms, conditions or privileges of employment,' deprives him or her of 'employment opportunities,' or 'adversely affects his status as an employee.'" Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997)(citing 42 U.S.C. § 2000e-2(a)).

In this case, plaintiff has submitted no evidence that the Corrective Performance Review altered his compensation, terms, conditions or privileges of employment. Furthermore, plaintiff fails to allege that his job was affected in any way except that he believed that this was the first step in a four-step process to terminate. Plaintiff concedes that no other action was ever taken prior to his retirement in April 2004.

Because plaintiff fails to submit any evidence of any change to his employment terms and conditions, we conclude that the Corrective Performance Review, standing alone, does not constitute an adverse employment action.

Even if the Corrective Performance Review is considered an adverse employment action, however, we conclude that plaintiff has not met his burden regarding the third prong (showing a causal connection between his protected activity and the adverse action) or that defendant's stated reason for the Corrective

Performance Review (that plaintiff failed to report the tie-wire incident to the proper person, namely, Mr. Culp) is a pretext for retaliation. In the light most favorable to plaintiff, we conclude that plaintiff fails to offer any evidence of a causal link or of pretext.

Accordingly, we grant defendant's motion for summary judgment on plaintiff's claim for retaliation.

Conclusion

For all the foregoing reasons, we grant Defendant's Motion for Summary Judgment and dismiss plaintiff's Complaint.